Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 28 of 2003
(Old No. 405 / 1991)

M/s Lakshmi Tea Center,
47/7 Mannuganj, Dehradun
through its Partner
Anil Kumar Singhal,

……. Applicant

Versus

1. Sales Tax Tribunal
   Dehradun Branch, Dehradun
2. Additional Commissioner (Judicial)
   Sales Tax Dehradun Region,
   Dehradun.
3. Additional Sales Tax Officer
   Range –IV, Dehradun.

……. Opposite Parties

None appeared on behalf of the Applicant.
Learned Standing Counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

Despite service of notice, no one turned up on behalf of the applicant-revisionist. Heard learned Standing Counsel appearing on behalf of the respondents and perused the record.

2) This revision, preferred under Section 11 of the U.P. Sales Tax Act, 1948, is filed before the Allahabad High Court in the year 1991 from where it has been received by

transfer under Section 35 of the U.P. Reorganization Act, 2000, for its disposal.

3) The question of law involved in this revision is as under:

> *"Whether, in the facts and circumstances of the case, the Sales Tax Tribunal was justified in confirming the order of ex-parte assessment enhancing the tax without issuing show cause notice to the assessee?"*

4) The assessee is a dealer, who is engaged in the business of sale of dry tea. The case pertains to the assessment year 1981-82. Gross sale of the assessee during said year was Rs. 51,223.97, which included Rs. 23,147.62 as 'net sales' in U.P. On said amount rate of tax charged was 8%, thus amount of tax arrives at Rs. 1,851.80. The assessing officer without issuing any show cause notice enhanced the assessment, vide his order dated 13.09.1985. The assessee has already closed the business since 1983, nor the sales tax registration was renewed since then. But the appeal against the enhancement order, appears to have been filed after five years of the enhancement order, which was highly belated, and, the Assistant Commissioner of Sales Tax rejected the appeal as barred by time. There is clear finding of facts in the order of the Assistant Commissioner of Sales tax that the notice of enhanced tax was served on the assessee and explanation for filing appeal after five years cannot be accepted in the circumstances. The satisfaction as to the condonation of delay appears to be a factual satisfaction on the part of the

Assistant Commissioner of Sales Tax and the Sales Tax Tribunal, which this Court cannot interfere unless the rejection of application for condonation of delay is against the law or totally perverse. That is not the case here. The question of law formulated in the revision is misconceived, as the appeal has been dismissed as time barred by the Tribunal and the appellate authority. Therefore, this Court finds no error in the order of the Tribunal. The question is answered accordingly, and the revision is dismissed.

(Prafulla C. Pant, J.)

Dt: 25.07.2005
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